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Verdict Sheet  
ct. Ex 5  
June 28, 2019

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

YAOXING XU,

Plaintiff,

-against-

MAPO TOFU FOOD CORP, d/b/a/ MAPO  
TOFU, JUN ZENG, and KAILAN FENG,

Defendants.

1:17-cv-9087-GHW

**VERDICT SHEET**

Please indicate each of your verdicts with a check mark (✓).

**Issue I: Employee or Independent Contractor**

1. Was the Plaintiff an independent contractor or employed by an independent contractor at any point in time during which he worked for the Defendants?

Yes \_\_\_\_\_ No      X     

*If you answered "Yes" to Question I.1, answer Question I.2. If you answered "No" to Question I.1, move ahead to Question II.4.*

2. Was the Plaintiff an independent contractor or employed by an independent contractor throughout the entire time that he worked for the Defendants?

Yes \_\_\_\_\_ No \_\_\_\_\_

*If you answered "Yes" to Question I.2, your deliberations are complete and you are directed to enter judgment for the Defendants. If you answered "No" to Question I.2, move ahead to Question I.3.*

3. During which time periods was the Plaintiff an independent contractor or employed by an independent contractor?

From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_  
 From \_\_\_\_\_ to \_\_\_\_\_

**Issue II: Minimum Wage Claims**

*Answer these questions only with respect to any period during which the Plaintiff was not an independent contractor or employed by an independent contractor.*

4. On average, how many compensable hours did the Plaintiff work per day? If the average number of hours worked per day changed, please note when that figure changed and what it changed to:

Hours Per Day	Period of Time (Date to Date)
7	From <u>MARCH 13, 2013</u> to <u>Dec. 31, 2013</u>
7	From <u>Jan. 1, 2014</u> to <u>Dec. 31, 2014</u>
8.5	From <u>Jan 1, 2015</u> to <u>Dec 31, 2015</u>
7.75	From <u>Jan 1, 2016</u> to <u>Dec 31, 2016</u>
8	From <u>Jan 1, 2017</u> to <u>Sep. 13, 2017</u>
	From _____ to _____
	From _____ to _____

5. On average, how many days did the Plaintiff work per week? If the average number of days worked per week changed, please note when that figure changed and what it changed to:

Days Per week	Period of Time (Date to Date)
5	From March 13, 2013 to March 13, 2014
4	From March 14, 2014 to Sep. 13, 2017
	From _____ to _____
	From _____ to _____
	From _____ to _____
	From _____ to _____
	From _____ to _____

6. On average, how many hours did the Plaintiff work per week? If the average number of hours worked per week changed, please note when that figure changed and what it changed to:

Hours Per Week	Period of Time (Date to Date)
35	From March 13, 2013 to Dec. 31, 2013
28	From Jan 1, 2014 to Dec. 31, 2014
34	From Jan 1, 2015 to Dec. 31, 2015
31	From Jan 1, 2016 to Dec 31, 2016
32	From Jan 1, 2017 to Sep 13, 2017
	From _____ to _____
	From _____ to _____

7. Regular Rate of Pay

- a. Was the Plaintiff paid on (i) an hourly basis or (ii) at a flat rate for an agreed upon period of time?

Hourly Basis X Flat Rate \_\_\_\_\_

- b. If you believe that this understanding changed at any point during the Plaintiff's employment, please indicate when the change occurred below, and the nature of the change

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*If you find that the Plaintiff was paid on an hourly basis throughout the period of his employment, proceed directly to part (d) of this Question.*

- c. If the Plaintiff was paid at a flat rate for an agreed upon period of time, indicate the rate and the agreed upon period of time below.

Rate Per Pay Period	Period of Time (Date to Date)
	From _____ to _____.
	From _____ to _____.
	From _____ to _____.
	From _____ to _____.
	From _____ to _____.
	From _____ to _____.
	From _____ to _____.

- d. What was the Plaintiff's Regular Rate of Pay for each period? (If you have found that the Plaintiff was paid on an hourly basis, this will be the same as his hourly rate during each period. Otherwise, please calculate this as described in the charges.)

Regular Rate of Pay	Period of Time (Date to Date)
\$ 5.00	From MARCH 13, 2013 to DEC 31, 2013.

\$ 5.65	From Jan 1, 2014 to Dec 31, 2014
\$ 5.65	From Jan 1, 2015 to Dec 31, 2015
\$ 7.50	From Jan 1, 2016 to Dec 31, 2016
\$ 7.50	From Jan 1, 2017 to Sep 13, 2017
	From _____ to _____
	From _____ to _____

8. How much on average was Plaintiff paid per week, excluding tips and gratuities? If this changed at any point, please indicate the amount that he received beside the relevant period below.

Pay Per Week	Period of Time (Date to Date)
\$ 175.00	From March 13, 2013 to Dec 31, 2013
\$ 158.20	From Jan 1, 2014 to Dec 31, 2014
\$ 192.10	From Jan 1, 2015 to Dec 31, 2015
\$ 232.50	From Jan 1, 2016 to Dec 31, 2016
\$ 240.00	From Jan 1, 2017 to Sep 13, 2017
	From _____ to _____
	From _____ to _____

9. Was the corporate Defendant entitled to the tip credit reduction?

Yes \_\_\_\_\_

No   X  

*If you answered "Yes," answer Questions II.10 and II.11. If you answered "No," move on to Question II.12.*

10. The minimum wage for employers entitled to the tip credit for the time that the Plaintiff started working for the Defendants until December 30, 2016 was \$5.00 per hour. Did the Defendants pay the Plaintiff at least \$5.00 per hour at all times between when he started working for the Defendants and December 30, 2016?

Yes \_\_\_\_\_

No \_\_\_\_\_

11. From December 31, 2016 through September 15, 2017, the minimum wage for employers entitled to a tip credit was \$9.15. Did the Defendants pay the Plaintiff at least \$9.15 per hour at all times from December 31, 2016 to September 15, 2017?

Yes \_\_\_\_\_

No \_\_\_\_\_

12. The minimum wage for employers not entitled to the tip credit for the time that the Plaintiff started working for the Defendants until December 30, 2013 was \$7.25 per hour. Did the Defendants pay the Plaintiff at least \$7.25 per hour at all times from when he started working for the Defendants and December 30, 2016?

Yes \_\_\_\_\_

No           X          

13. The minimum wage for employers not entitled to the tip credit from December 31, 2013 to December 30, 2014 was \$8.00 per hour. Did the Defendants pay the Plaintiff at least \$8.00 per hour at all times from December 31, 2013 to December 30, 2014?

Yes \_\_\_\_\_

No           X          

14. The minimum wage for employers not entitled to the tip credit from December 31, 2014 to December 30, 2015 was \$8.75 per hour. Did the Defendants pay the Plaintiff at least \$8.75 per hour at all times from December 31, 2014 to December 30, 2015?

Yes \_\_\_\_\_

No           X          

15. The minimum wage for employers not entitled to the tip credit from December 31, 2015 to December 30, 2016 was \$9.00 per hour. Did the Defendants pay the Plaintiff at least \$9.00 per hour at all times from December 31, 2015 to December 30, 2016?

Yes \_\_\_\_\_

No           X          

16. The minimum wage for an employer not entitled to the tip credit from December 31, 2016 to September 15, 2017 was \$11.00 per hour. Did the Defendants pay the Plaintiff at least \$11.00 per hour at all times from December 31, 2016 to September 15, 2017?

Yes \_\_\_\_\_

No           X



**Issue III: Spread of Hours**

*Answer these questions only with respect to any period during which the Plaintiff was not an independent contractor or employed by an independent contractor.*

17. Did the Plaintiff's spread of hours exceed 10 hours on any given day at any time during the time that he worked for the Defendants?

Yes   X   No           

*If "Yes," answer Questions III.18 and III.19. If "No," move on to Question IV.20.*

18. Indicate the number of days you find that the spread of hours exceeded 10 hours for the Plaintiff during the time that he worked for the Defendants:

Days Per Week	Period of Time (Date to Date)
2	From Oct 1, 2014 to Nov 30, 2014
3	From Dec 1, 2014 to Dec 15, 2014
2	From Dec 16, 2014 to Dec 31, 2014
2	From Jan 1, 2015 to Jan 15, 2015
1	From Jan 16, 2015 to Jan 31, 2015
3	From Feb 1, 2015 to Feb 15, 2015
2	From Feb 16, 2015 to Feb. 28, 2015

19. Was the Plaintiff properly compensated for his spread of hours by the Defendants?

Yes            No   X  

**Issue IV: Pay Stubs**

*Answer these questions only with respect to any period during which the Plaintiff was not an independent contractor or employed by an independent contractor.*

20. Was the Plaintiff provided with a full and accurate pay stub each payday during the time that the Plaintiff worked for the Defendants?

Yes \_\_\_\_\_

No      X     

*If "Yes," move on to Question 22. If "No," answer Question 21.*

21. For how many weeks did the Defendants fail to provide the Plaintiff with full and accurate pay stubs?

201 weeks.

**Issue V: Wage Notification**

*Answer these questions only with respect to any period during which the Plaintiff was not an independent contractor or employed by an independent contractor.*

22. Was the Plaintiff provided with an adequate wage notice within ten days of the date that he was hired by the Defendants?

Yes \_\_\_\_\_

No      X     

*If "Yes," move on to Question VI.25. If "No," answer Questions V.23 and V.24.*

23. Was the Plaintiff ever provided with an adequate wage notice?

Yes \_\_\_\_\_

No      X     

*If "Yes," answer Question V.24. If "No," move on to Question VI.25.*

24. On what date was the Plaintiff provided with an adequate wage notice?

\_\_\_\_\_.

**Issue VI: Tip Misappropriation**

*Answer these questions only with respect to any period during which the Plaintiff was not an independent contractor or employed by an independent contractor.*

25. Did the Defendants improperly retain a portion of the Plaintiff's tips?

Yes \_\_\_\_\_

No      X     

*If "Yes," answer Question VI.26. If "No," move on to Question VII.27.*



26. What amount of the Plaintiff's tips did the Defendants improperly retain during the course of his work for them?

\$ \_\_\_\_\_

**Issue VII: Good Faith**

27. To the extent that the Defendants failed to compensate the Plaintiff the applicable minimum wage, did they nonetheless act in good faith?

Yes \_\_\_\_\_

No          X         

28. To the extent that the Defendants failed to compensate the Plaintiff his spread of hours, did they nonetheless act in good faith?

Yes \_\_\_\_\_

No          X         

29. To the extent that the Defendants failed to provide the Plaintiff with adequate pay stubs, did they nonetheless act in good faith?

Yes          X         

No \_\_\_\_\_

30. To the extent that the Defendants failed to provide the Plaintiff with adequate wage notification, did they nonetheless act in good faith?

Yes \_\_\_\_\_

No          X         

*You are finished. The foreperson should ensure that each juror agrees with the answer to each question. If so, the foreperson should date and sign below.*

Dated June 28, 2019

\_\_\_\_\_

Signature of Foreperson

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Name of Foreperson